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VAUGHAN AND OTHERS V. VAUGHAN'S EXECUTRIX.—Decided at Wytheville, July 6, 1899.—*Riely, J.*

1. WILLS—*Case in judgment—Devise to wife and "my children"—Motive for gift—"Children."* A testator, by his will, declares: "I do hereby bequeath to my wife, Emma Lee Vaughan, and to my children all of my property of every kind, real and personal, and do hereby appoint my wife my sole executrix, without security, as long as she shall remain my lawful widow; should she marry again, the minor children to choose guardians, and my wife, in that event, to take a child's part, to be hers as long as she lives, and at her death to be distributed amongst my children then living. I further request that no appraisement or other expense be made."

Held:

1. The wife takes a fee-simple in the whole of the real estate and the absolute title to whole of the personal property, liable to be defeated, "should she marry again;" the children being mentioned as the motive for the gift. The words "her children," "our children" and "my children" when used as here mean substantially the same.

2. Upon marriage of the widow her estate is cut down to a life estate in a child's part of the estate, real and personal, and the remainder in such child's part passes to the children of the testator living at the death of the widow, and excluding the descendants of such children as may die between the marriage and death of the widow. The word "children" as here used means immediate offspring.

3. The residue of the property, real and personal, after deducting a child's part for the widow, in the contingency provided for is to be "divided equally among the children of the testator then living and the descendants of any that may be dead, such descendants to take *per stirpes*."

PRICE V. WALL'S EX'OR.—Decided at Wytheville, July 6, 1899.—

Harrison, J.

1. RECORDING ACTS—*Unrecorded deed—Creditors—Section 2463 of Code—"Subsequent."* An unrecorded deed is void as to all creditors who, but for the deed, would have had a right to subject the property conveyed to their debts, whether such debts were contracted before or after such deed. The word "subsequent" in section 2463 of the Code applies to purchasers only.

2. JUDGMENTS—*Exchange of lands—Failure to record deed.* If upon an exchange of lands the parties execute mutual conveyances, but the grantee of one tract fails to record his deed, a judgment against his grantor binds the land so given in exchange as well as that received in exchange. The rights of the parties are not affected by the character of the consideration for the unrecorded deed.

KANE V. VIRGINIA COAL AND IRON CO.—Decided at Wytheville, July 6, 1899.—*Keith, P.* Absent, *Riely, J.*

1. CHANCERY JURISDICTION—*Cloud on title—Party out of possession—Adequate remedy at law—Case in judgment.* Equity will not take jurisdiction of a bill to remove clouds on the title to real estate where the complainant has the legal title

and is out of possession. In such case the remedy at law is full, adequate and complete. In the case in judgment the evidence does not show possession in the complainant even if it be conceded that he has the legal title.

2. CHANCERY JURISDICTION—*Fraud—Adequate remedy at law.* Although fraud is an elementary ground of equitable jurisdiction, the jurisdiction will not be exercised where the party invoking it has as effectual and complete a remedy at law as in equity, and the remedy at law is direct, certain and adequate.

3. CHANCERY JURISDICTION—*Discovery.* Although a prayer for discovery might be sufficient to invoke the jurisdiction of a court of equity, yet if the bill contain no such prayer, and no other grounds for equitable jurisdiction are charged, the bill should be dismissed.

HUDSON V. MAX MEADOWS LAND AND IMPROVEMENT CO.—Decided at Wytheville, July 11, 1899.—*Cardwell, J.*

1. SPECIFIC PERFORMANCE—*Parol contract—Part performance.* A court of equity will compel the specific performance of a parol contract for the sale of real estate where the contract is certain and definite in its terms, and there have been such acts of part performance that neither party can be restored to his former position.

2. SPECIFIC PERFORMANCE—*Encumbrances.* A mere encumbrance on real estate is not sufficient to bar a suit for specific performance, either by the vendor or vendee, if the encumbrance may be readily removed without injury to either party by the application of the purchase money thereto.

3. CHANCERY PLEADING AND PRACTICE—*Specific performance—Encumbrances—Parties—Reference as to state of title.* As a general rule strangers to a contract for the sale of real estate should not be made parties to a suit for specific performance, but if by making the encumbrancer a party the title to the land can be cleared in a reasonable time, and no injury done to the parties, the court will permit it in order to enable it to enforce the contract. If need be the court may, in a proper case, refer the cause to a commissioner to ascertain the state of the title.

MARTIN V. SOUTH SALEM LAND CO.—Decided at Wytheville, July 11, 1899.—*Buchanan, J.*

1. INSOLVENT CORPORATIONS—*Enforcement of stock subscriptions—Final decree—Act December 22, 1897.* A decree which settles the principles of a cause, determines the rights of creditors, the validity of stock subscriptions and the liability of stockholders to pay the same as far as necessary to satisfy the demands of creditors, and leaves nothing to be done except to execute and give effect to it, is a final decree on the merits within the purview of the act of December 22, 1897 (Acts 1897-8, p. 16).

2. CONSTITUTIONAL LAW—*Statutes—Construction—One construction invalid.* If two constructions may be given to a statute, one of which is clearly within and the other without the legislative power, the courts will adopt that construction which is within the legislative power.

3. CORPORATIONS—*Assessments on stockholders—Insolvency—Execution returned "no effects."* In determining what, if any, additional assessments should be made